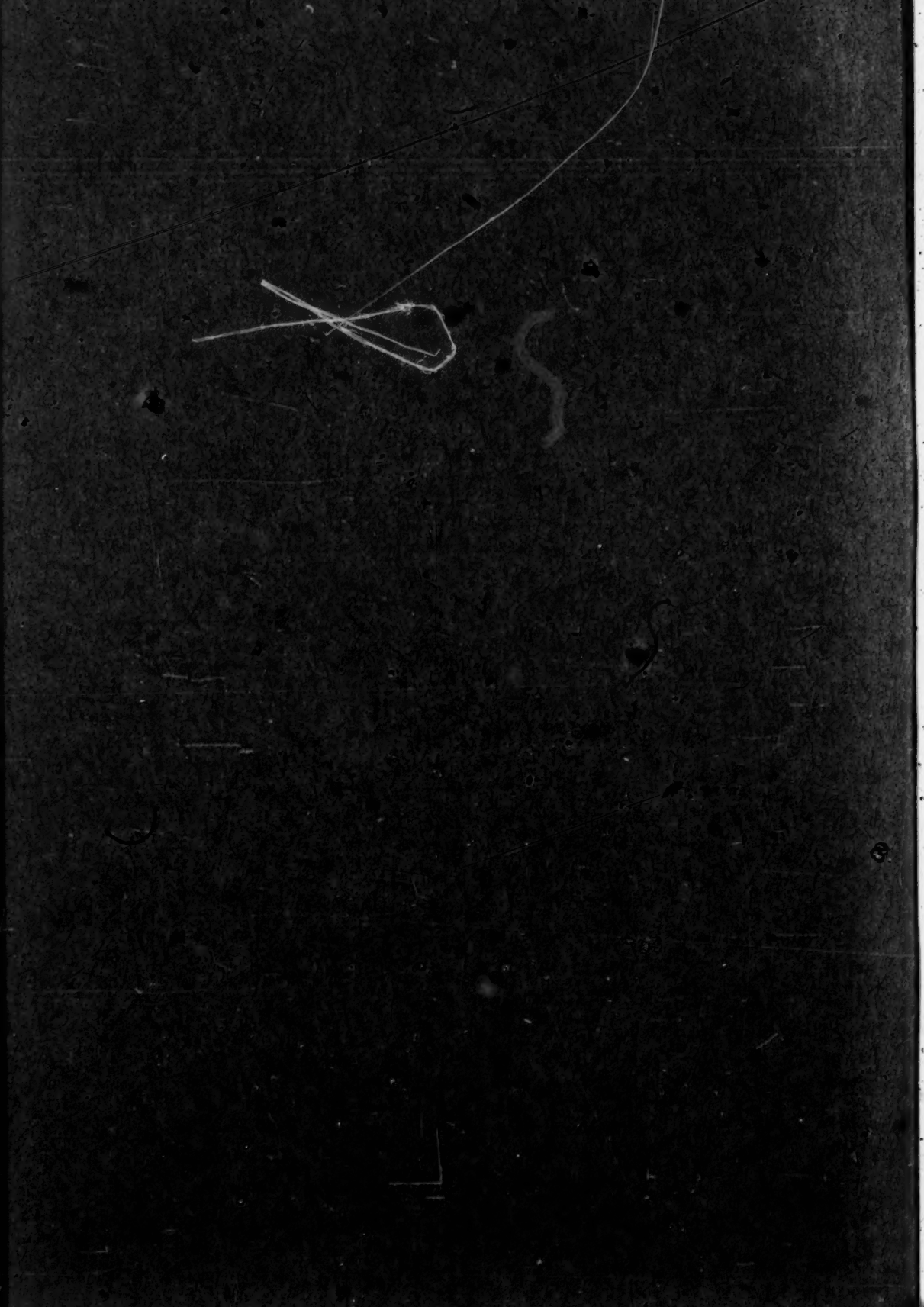


INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statute and Regulations Involved	2
Interest of the United States	6
Statement	7
Summary of Argument	10
Argument:	
I. Petitioner should not be deprived of his right to bring an action under Title VII of the Civil Rights Act of 1964 because he sought relief under a collective bargaining agreement and received an adverse arbitral award prior to filing suit	14
A. Title VII and collective bargaining agreements provide legally distinct rights which are properly enforceable in different forums	14
B. The federal judiciary is the final forum for determining the rights conferred by Title VII	22
C. Permitting individuals alleging discrimination to proceed in more than one appropriate forum properly accommodates congressional policies favoring both private resolution of employment disputes and full protection of the individual against discrimination	25

419-704—71——1

Argument—Continued Page

II. Respondent violated title VII by refusing to make a reasonable accommodation to petitioner's sincere religious beliefs
A. Title VII prohibits employment practices neutral on their face which have a discriminatory effect and are not required by business necessity 29
B. Respondent's "overtime substitute" policy has a religiously discriminatory effect and was not shown to be necessary to the the safe and efficient operation of its business 34

Conclusion 36
Appendix A 39
Appendix B 41

CITATIONS

Cases:
Barnett v. *Rodgers*, 410 F. 2d 995 33
Beverly v. *Lone Star Lead Constr. Corp.*, 3 FEP cases 74 25
Bowe v. *Colgate-Palmolive Co.*, 416 F. 2d 711 ..... 16, 17, 20, 25
Boys Markets, Inc. v. *Retail Clerks Union, Local 770*, 398 U.S. 235 ..... 18, 27
Braunfeld v. *Brown*, 366 U.S. 599 33
Carey v. *Westinghouse Corp.*, 375 U.S. 261 19
Culpepper v. *Reynolds Metals Co.*, 421 F. 2d 888 ..... 16, 25, 26
Cunningham v. *Litton Industries*, 413 F. 2d 887 24
Fekete v. *U.S. Steel Corp.*, 424 F. 2d 331 24
Flowers v. *Local No. 6, Laborers Int'l U. of North America*, 431 F. 2d 205 24–25
Georgia Power Co. v. *Equal Employment Commission*, 412 F. 2d 462 24
Glover v. *St. Louis-San Francisco Ry. Co.*, 393 U.S. 324 20
Griggs v. *Duke Power Co.*, No. 124, this Term, decided March 8, 1971 ..... 7, 13, 29, 30, 31

Cases—Continued

	Page
Hutchings v. *United States Industries, Inc.*, 428 F. 2d 303	16, 20, 23, 25, 26
Johnson v. *Seaboard Air Line R.R. Co.*, 405 F. 2d 645, certiorari denied *sub nom. Pilot Freight Carriers, Inc.* v. *Walker*, 394 U.S. 918	24
Jones v. *Lee Way Motor Freight Inc.*, 431 F. 2d 245, certiorari denied, March 8, 1971, No. 1113, this Term	30
King v. *Georgia Power Co.*, 295 F. Supp. 943	16
Local 189, United Papermakers and Paperworkers v. *United States*, 416 F. 2d 980, certiorari denied, 397 U.S. 919	30
Local Union No. 12, United Rubber, C., L. & P. Workers v. *National Labor Relations Board*, 368 F. 2d 12, certiorari denied, 389 U.S. 837	28
Love v. *Pullman*, No. 6008, this Term, certiorari granted, February 22, 1971	24
Miller v. *International Paper Co.*, 408 F. 2d 283	15, 24
Monsanto Chemical Co., 130 N.L.R.B. 1097	21
National Labor Relations Board v. *Acme Industrial Co.*, 385 U.S. 432	19, 26
National Labor Relations Board v. *Huttig Sash & Door Co.*, 377 F. 2d 964	19
National Labor Relations Board v. *Strong*, 393 U.S. 357	19
Newman v. *Piggie Park Enterprises*, 390 U.S. 400	6
Norman v. *Missouri Pacific Railroad*, 414 F. 2d 73	29
Phillips v. *Martin Marietta Corp.*, No. 73, this Term, decided January 25, 1971	31
Republic Steel Corp. v. *Maddox*, 379 U.S. 650	18, 20
Sanchez v. *Standard Brands*, 2 FEP Cases 788	24
Sherbert v. *Verner*, 374 U.S. 398	9, 13, 33, 34
Smith v. *Evening News Assn*, 371 U.S. 195	19

Cases—Continued

	Page
Stebbins v. *Nationwide Mutual Insurance Company*, 382 F. 2d 267 (C.A. 4) cert. denied 390 U.S. 910	14
Taylor v. *Armco Steel Corp.*, 429 F. 2d 498	29
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448	27
Udall v. *Tallman*, 380 U.S. 1	31
United Packinghouse Food & Allied Workers v. *National Labor Relations Board*, 416 F. 2d 1126, certiorari denied, 396 U.S. 903	28
United States Bulk Carriers, Inc. v. *Arguelles*, No. 29, this Term, decided January 13, 1971	18, 19
United States v. *Int'l Brotherhood of Electrical Workers, Local No. 38*, 428 F. 2d 144, certiorari denied, 400 U.S. 943	31
United States v. *Pullman*, No. 957, this Term, certiorari granted, February 22, 1971	24
United States v. *Sheet Metal Workers, Local 36*, 416 F. 2d 123	30
United Steelworkers of America v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593	17, 22
United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574	18
Vaca v. *Sipes*, 386 U.S. 171	20, 28
Weeks v. *Southern Bell Telephone & Telegraph Co.*, 408 F. 2d 228	24
West Virginia State Bd. of Ed. v. *Barnette*, 319 U.S. 624	33
Wilko v. *Swan*, 346 U.S. 427	18

Statutes:

Civil Rights Act of 1964, Title VII	*passim*
42 U.S.C. 2000e–2	2
42 U.S.C. 2000e–5	3
42 U.S.C. 2000e–5a	
42 U.S.C. 2000e–5b (Sec. 706(b))	14
42 U.S.C. 2000e–5d (Sec. 706(d))	14
42 U.S.C. 2000e–5e (Sec. 706(e))	14, 23, 31
42 U.S.C. 2000e–5f (Sec. 706(f))	23
42 U.S.C. 2000e–5g (Sec. 706(g))	23
42 U.S.C. 2000e–5i (Sec. 706(i))	23
42 U.S.C. 2000e–6	23

Miscellaneous: Page

American Law Institute, *Restatement of Judgments*, § 71, comments a, c, d 17, 21
Comparative Analysis of Title VII of H.R. 7152 as Passed by the House with S. 1937, as Reported, 110 Cong. Rec. 12696, 88th Cong., 2d Sess 23, 24
Comparative Analysis of the Civil Rights Bill, H.R. 7152, as Passed by the House of Representatives and by the Senate, 110 Cong. Rec. 15999, 88th Cong., 2d Sess 24
110 Cong. Rec. 13650, 88th Cong., 2d Sess 28
110 Cong. Rec. 7207 28
Cox, *Rights Under A Labor Agreement*, 69 Harv. L. Rev. 601 (1956) 20
EEOC, *Guidelines on Discrimination Because of Religion*, 29 C.F.R. (1967 ed.) 1605.1 ..... 6, 9, 11, 13, 31, 32
EEOC, *Guidelines on Employee Selection Procedures*, 29 C.F.R. 1607 (35 Fed. Reg. 12333) 30
EEOC, *Guidelines on Discrimination Because of Religion*, 29 C.F.R. (1968 ed.) 1605.1 32
Platt, *The Relationship Between Arbitration and Title VII of the Civil Rights Act of 1964*, 3 Ga. L. Rev. 398 (1969) 18

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 835

ROBERT KENNETH DEWEY, PETITIONER

v.

REYNOLDS METALS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The initial opinion of the court of appeals (A. 122a–140a) is reported at 429 F.2d 324. Its opinion denying rehearing and rehearing *en banc* (A. 141a–148a) is reported at 429 F.2d 334. The opinions of the district court (A. 29a–38a, 89a–121a) are reported at 291 F. Supp. 786, 300 F. Supp. 709, and 304 F. Supp. 1116.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 1970. A petition for rehearing was denied on August 11, 1970. The petition for a writ of certio-

rari was filed on October 12, 1970, and granted on January 18, 1971. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether an employee, alleging employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, waives his right to bring an action under that Title in federal district court by first pursuing the grievance-arbitration procedures of a collective bargaining agreement.

2. Whether an employer, subject to Title VII, may lawfully discharge an employee who refuses solely for religious reasons either to work overtime on Sundays or to find a qualified replacement when the employer has made no showing that its refusal to make a reasonable accommodation to the employee's religious beliefs is necessary for the safe and efficient operation of its business.

STATUTE AND REGULATIONS INVOLVED

Title VII of the Civil Rights Act of 1964 provides in pertinent part:

42 U.S.C. 2000e–2

> (a) It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin * * *.

42 U.S.C. 2000e–5

(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, * * * that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. * * *

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under

the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceedings shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

* * * * *

(d) A charge under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), of this section, such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) of this section (except

that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this subchapter, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) of this section or the efforts of the Commission to obtain voluntary compliance.

(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. * * *

(g) If the court finds that the respondent has intentionally engaged in or is intentionally

> engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). * * *

The pertinent EEOC *Guidelines on Discrimination Because of Religion* are set forth in Appendices A and B, *infra*, pp. 39–43.

INTEREST OF THE UNITED STATES

The decision in this case is likely to have a significant impact upon enforcement of federal rights under Title VII of the Civil Rights Act of 1964, as well as upon federal labor policy.

Title VII relies strongly on private court actions as a means of enforcing statutory rights against discrimination on the basis of religion, race, color, sex, or national origin. Cf. *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400. Federal labor policy favors settlement of disputes arising under collective bargaining agreements through the grievance and arbitration procedures provided for in such agreements. The decision of the court of appeals, which requires that an employee must choose between grievance-arbitration and suit under Title VII, inevitably undermines one or both of these policies. The United States believes that the policies are complementary and that an election of rights should not be required.

Congress has also entrusted the Equal Employment Opportunity Commission and the Attorney General with important responsibilities for eliminating discriminatory employment practices. The court of appeals' refusal to recognize the responsibility of employers to abandon employment practices, not required by business necessity, which, although neutral on their face, have a religiously discriminatory effect is contrary to Commission *Guidelines* interpreting Title VII and inconsistent with this Court's recent decision in *Griggs* v. *Duke Power Co.*, No. 124, this Term. Unless reversed by this Court, the decision below could adversely affect efforts of the federal government to cure all types of discrimination forbidden by Title VII.

STATEMENT

Petitioner had been employed by the respondent company for fifteen years before he was discharged in 1966 for violations of the company's "overtime substitute" policy (A. 39a). Beginning in 1960, collective bargaining agreements between the United Automobile Workers, of which petitioner was a member, and the company have included a provision permitting the company to require employees to work overtime unless they have a substantial and justifiable reason for not doing so (A. 68a–69a).[1] In September 1965, the company issued an interpretation of the agreement which allowed an employee to be relieved of an overtime assignment by arranging for another qualified employee of the company to replace him (A. 70a).

[1] The collective bargaining agreement also provided for the processing of grievances and their arbitration.

Petitioner, a member of the Faith Reformed Church since 1961, refused, because of his religious beliefs, to work overtime on Sundays or to ask anyone to replace him on that day.[2] Upon his first refusal on August 28, 1966, petitioner was given a written warning (A. 43a). He was laid off for three days as a result of his second refusal to work or obtain a substitute on September 4, 1966, and was discharged after his third refusal on September 11, 1966 (*ibid.*) On each occasion, there were at least four of eleven employees in petitioner's job classification who were not scheduled for overtime work (A. 43a–44a).

Petitioner filed grievances because of his layoff (September 7) and discharge (September 19) (A. 43a–44a). The grievances were denied at every stage of the procedure—and finally by an arbitrator on June 29, 1967 (A. 46a, 65a–78a). At the hearing before the arbitrator, petitioner was represented by the International Representative of the Union and the chairman of its bargaining committee; respondent was represented by its attorney. Respondent filed a brief after the hearing, but no brief was filed on behalf of petitioner (A. 31a). The arbitrator ruled that:

> An important commitment arising out of one's religious convictions and obligations can

[2] Although he refused to work himself, petitioner did find a qualified replacement on five Sundays between January 1966 and August 1966. Beginning on August 28, 1966, however, petitioner refused to find a qualified replacement for Sunday work. It was stipulated that this refusal, like his refusal to work himself, was "because of his religious beliefs," the sincerity of which was not challenged (A. 42a–45a).

> provide a "substantial and justifiable reason", [within the meaning of the collective agreement] for excusing an employee from some particular work assignment, on a Sunday or some other day * * * [H]owever * * * the Agreement does not permit a regular and continuing refusal of all Sunday work on religious grounds [A. 78a].

The arbitrator did not consider the effect of Title VII, but confined his decision to the terms of the collective agreement which did not include any provision relating to discrimination on the basis of religion.

Petitioner also complained to the Michigan Civil Rights Commission, on September 16, 1966. After that commission denied his claim on December 13, 1966 (A. 46a), petitioner filed a charge with the Equal Employment Opportunity Commission on January 4, 1967. The Commission found reasonable cause to believe the company had violated Title VII and undertook conciliation. By letter dated May 3, 1968, EEOC advised petitioner that conciliation efforts had failed and notified him that he could, within thirty days, institute a civil action in the appropriate federal court. Petitioner brought this action within the thirty-day period on May 31, 1968 (A. 47a).

The district court, relying primarily upon this Court's decision in *Sherbert* v. *Verner*, 374 U.S. 398, and the Commission's *Guidelines on Discrimination Because of Religion*, issued on July 10, 1967, 29 C.F.R. 1605.1 (App. A, *infra*, pp. 39–40), held that the company's discharge of Dewey constituted religious discrimination in violation of Title VII (A. 89a–

103a). The district court rejected the contention that petitioner was precluded from suing under Title VII because he had pursued his rights under the grievance-arbitration procedure of the collective bargaining agreement (A. 29a–38a).

The court of appeals, with one judge dissenting, reversed and ordered the complaint dismissed. It ruled that suit under Title VII cannot be brought after a grievance has been finally arbitrated (A. 134a–136a). The court asserted that federal labor policy's preference for arbitration binding on both parties required that the arbitrator have the "right to finally determine" grievances based on claims of discrimination in violation of civil rights statutes. "Any other construction would bring about the result * * * that the employer, but not the employee, is bound by the arbitration" (A. 135a). This, the court reasoned, would deter employers from agreeing to include arbitration clauses in collective bargaining agreements.

The court also considered the discrimination issue. It held that there had been no violation of Title VII because the company discharged petitioner for violation of the provisions of the collective bargaining agreement, which applied equally to all employees, and not because of his religious beliefs (A. 131a).

SUMMARY OF ARGUMENT

I

The decision of the court of appeals requires an individual claiming rights under both Title VII and a collective bargaining agreement to choose one for-

um—the arbitrator or the federal courts—for a final determination of both rights. That holding, which directly conflicts with decisions of two other courts of appeals, is wrong. The rights established by Title VII and collective bargaining agreements are legally distinct, and an employee should have the opportunity to seek vindication of these rights in the separate forums which have the responsibility and competence to interpret and enforce them.

Congress intended, by Title VII, to protect individuals from discrimination by private employers on the basis of race, color, religion, sex, or national origin. It created the Equal Employment Opportunity Commission, with power to seek, by persuasion and conciliation, voluntary compliance with Title VII. But it placed the final responsibility for the enforcement of Title VII rights in the federal courts and gave aggrieved individuals the right to initiate suits.

Significant differences between the processes of arbitration of contract claims and litigation regarding statutory issues emphasize the necessity of preserving the individual's right of access to the judicial forum. An arbitrator interprets an agreement among private parties—here, the union, on behalf of the employees, and the employer. Statutory rights under Title VII are, by contrast, individual rights, whose content does not in any way depend on the existence, or the terms, of a collective agreement. The arbitrator is bound by the terms of the collective bargaining agreement, and is without power to base his awards merely on the general requirements of statutes. It is the courts, not

arbitrators, which have the responsibility, as well as the expertise, for the uniform application of Title VII guarantees. In this case, in fact, the arbitrator considered only the collective bargaining agreement, which did not contain a provision regarding religious discrimination, and he did not purport to render a decision on whether the application of that agreement violated Title VII. Under settled principles of the law of judgments, his determination should be held to have had no effect on petitioner's Title VII claims.

Permitting individuals to seek both arbitration of their contract grievances and judicial determination of their Title VII claims properly accommodates the congressional policies favoring arbitration of disputes under collective bargaining agreements and full judicial protection of the individual's Title VII rights. The approach of the court of appeals, however, inevitably would undermine one or both of these policies by forcing the individual to elect between the forums authorized to decide each of these rights. Nor is the decision of the court below justified because the employer otherwise would be subject to "litigation" regarding the same rights in more than one forum, for the rights involved are legally distinct. And Congress, in passing Title VII, quite clearly indicated that an employee was not to be deprived of adjudication of rights against discrimination, provided by various laws and agreements, in the forums responsible for interpretation and application of those rights, even though the employer might thereby be subjected to proceedings in more than one forum.

II

The court of appeals also erred in ruling that respondent had not discriminated against petitioner because of his religion in violation of Title VII. It held that the employer's "overtime substitute" policy—requiring employees themselves to obtain a replacement whenever they do not wish to work scheduled overtime, for whatever reason—is valid because it is neutral on its face, applying equally to all employees, regardless of their religion. As this Court recently held, however, Title VII does not forbid only overt discrimination. It applies as well to employment practices which are neutral on their face but discriminatory in effect. When an employment practice, neutral on its face, has a discriminatory effect, the employer must show that it is required by "business necessity." *Griggs* v. *Duke Power Co.*, No. 124, this Term, decided March 8, 1971. This concept is reflected in the Equal Employment Opportunity Commission's *Guidelines on Discrimination Because of Religion,* which require employers to make "reasonable accommodations to the religious needs" of their employees. And it is essentially the same standard which this Court has applied in protecting from governmental infringement the constitutional right to free exercise of religion. *Sherbert* v. *Verner,* 374 U.S. 398.

The religiously discriminatory effect of respondent's "overtime substitute" policy in this case is plain. It appears equally clear that the employer could easily have accommodated petitioner's religious needs simply by obtaining a substitute itself, from

among its own available, qualified employees. Respondent made no showing that "business necessity" prevented it from making a reasonable accommodation. Accordingly, the judgment of the court of appeals should be reversed.

ARGUMENT

I

PETITIONER SHOULD NOT BE DEPRIVED OF HIS RIGHT TO BRING AN ACTION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 BECAUSE HE SOUGHT RELIEF UNDER A COLLECTIVE BARGAINING AGREEMENT AND RECEIVED AN ADVERSE ARBITRAL AWARD PRIOR TO FILING SUIT

A. Title VII and collective bargaining agreements provide legally distinct rights which are properly enforceable in different forums

1. Petitioner sought basically the same relief—reinstatement with back pay—simultaneously under the collective bargaining agreement and Title VII. He filed a grievance under the contract because of his discharge on September 19, 1966, and commenced the process which ultimately led to filing of suit under the statute on September 16, 1966, by complaining to the Michigan Civil Rights Commission.[2]

[2] Section 706(b), 42 U.S.C. 2000e–5(b), requires that a charge of unlawful employment practice must first be submitted to a state or local agency which is "author[ized] to grant or seek relief from such practice or to institute criminal proceedings." *Stebbins* v. *Nationwide Mutual Insurance Company*, 382 F. 2d 267 (C.A. 4), certiorari denied, 390 U.S. 910. Section 706(d), 42 U.S.C. 2000e–5(d), provides time limits for filing complaints with EEOC and Section 706(e), 42 U.S.C. 2000e–5(e), permits suit

The grievance-arbitration process proved speedier. Petitioner's grievances were denied finally by an arbitrator on June 29, 1967. Although he complained to the Equal Employment Opportunity Commission on January 4, 1967, the Commission did not conclude its efforts at conciliation for more than a year.[4] Petitioner promptly filed suit upon receiving notice from the Commission that conciliation efforts had failed and that he could sue in federal district court. The arbitrator's decision preceded the filing of suit under Title VII by eleven months.

The court of appeals ruled that petitioner could not obtain a judicial determination of his statutory rights under Title VII because the arbitrator's decision denying his claim under the contract was rendered first. The court stated:

> The question in our case is not whether arbitration and resort to the courts could be maintained at the same time; rather our case involves the question whether suit may be brought in court *after* the grievance has been finally adjudicated by arbitration (A. 136a).

The effect of the court's decision was, therefore, to make the arbitrator's decision binding as to petition-

---

by an individual upon the Commission's failure, within a certain time, to achieve voluntary compliance with the requirements of Title VII.

[4] While the Commission's conciliation efforts are under way, the complainant may request a letter from the Commission, authorizing him to sue, any time after 60 days from the filing of the complaint with the Commission. In practice, most complainants await completion of the Commission's efforts before filing suit. See *Miller* v. *International Paper Co.*, 408 F. 2d 283 (C.A. 5).

er's claims under Title VII (on which the arbitrator did not rule) as well as under the collective bargaining agreement.[5] This holding ignores the fact that the rights established by the contract and the statute are legally distinct, even though the appropriate relief for violations of these rights may be essentially the same. Since the rights are separate, an individual asserting a violation of both of them should not be deprived of a full hearing in either of the separate forums which are authorized to interpret and enforce each of them.

Courts of appeals in two circuits, in conflict with the decision below, have correctly held that Title VII and collective bargaining agreements establish distinct rights which are separately enforceable in the appropriate forums. *Hutchings* v. *United States Industries, Inc.*, 428 F. 2d 303 (C.A. 5); *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (C.A. 7); see, also, *Culpepper* v. *Reynolds Metals Co.*, 421 F. 2d 888 (C.A. 5). As the court held in *Hutchings*, an "arbitrator's determination under the contract has no effect upon the court's *power* to adjudicate a violation of Title VII rights."

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[5] The court did not hold that employees must always follow the grievance-arbitration procedure rather than the Title VII procedure. Cf. *Culpepper* v. *Reynolds Metals Co.*, 421 F. 2d 888 (C.A. 5); *King* v. *Georgia Power Co.*, 295 F. Supp. 943 (N.D. Ga.). If an employee asserting rights against discrimination ignored the grievance-arbitration procedure—assuming he was not bound or could not be bound by the provisions of the collective bargaining agreement to resort first to grievance-arbitration—or if the court rendered its decision prior to the arbitrator's, the judicial decision would, under the decision below, presumably be binding as to the availability of relief under the collective bargaining agreement.

428 F. 2d at 313. An employee, then, does not waive his rights in one forum by first seeking relief in the other. Rather, he may "utilize dual or parallel prosecution both in court and through arbitration so long as election of remedy was made after adjudication so as to preclude duplicate relief which would result in an unjust enrichment or windfall to plaintiffs." *Bowe* v. *Colgate-Palmolive Co., supra,* 416 F. 2d at 715.

2. There are significant differences between the processes of arbitration under a collective agreement and litigation under Title VII which emphasize the importance of recognizing that the rights established by the contract and the statute are distinct and appropriately enforceable in separate forums.

The role of the arbitrator is fundamentally to interpret and apply the contract. As this Court has said, "an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may, of course, look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.,* 363 U.S. 593, 597. Accordingly, the effect of the arbitrator's award, like that of the judgment of any tribunal of special and limited jurisdiction, does not properly extend to non-contract issues. Cf. American Law Institute, *Restatement of Judgements,* § 71 and comments *a* and *d.* See, also, n. 7, *infra,* and accompanying text.

The arbitrator's expertise, moreover, is in the "industrial common law—the practices of the industry and the shop." *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581–582. This expertise is one of the factors which makes arbitration the preferred forum for determination of ordinary industrial disputes primarily concerning application of the collective bargaining agreement. Arbitrators do not, however, have special competence and experience in the application of statutory and constitutional rights. See *U.S. Bulk Carriers, Inc.* v. *Arguelles*, No. 29, this Term, decided January 13, 1971; *Wilko* v. *Swan*, 346 U.S. 427. See, also, Platt, *The Relationship Between Arbitration and Title VII of the Civil Rights Act of 1964*, 3 Ga. L. Rev. 398 (1969).

It is true, as the court below noted, that national labor policy strongly favors arbitration as the means of settling collective bargaining disputes. See *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235; *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650. But, as Mr. Justice Harlan, concurring, recently explained in *U.S. Bulk Carriers, Inc.* v. *Arguelles*, *supra*, the preference for arbitration applies only to "substantive rights [which] derive solely from the contract"; the fact that the employee "owes those rights to the actions of his union representative in the collective-bargaining process, warrants the extension of the boundaries of collective consent to his individual remedial preferences" (slip. op. at 4). Where a right is claimed under a federal statute, however, "the pre-

sumption of comprehensiveness of the arbitral remedy is * * * rebutted" (*id.* at 5) and remedies prescribed by statute for vindication of the statutory right remain available. See, *e.g.*, *National Labor Relations Board* v. *Strong*, 393 U.S. 357; *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432; *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, 270–271; *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 377 F. 2d 964, 970 (C.A. 8); cf. *Smith* v. *Evening News Assn.*, 371 U.S. 195. This principle applies *a fortiori* where, as here, the statute confers upon individuals a right that is wholly independent of the collective relationship—a right whose substance derives entirely from the statute itself (and from regulations adopted under it by the agency responsible for its enforcement).[6] Indeed, in contrast to Title VII's emphasis upon the individual's right of access to the courts, collective bargaining agreements place the responsibility for the extent and manner of processing a grievance on the Union, not

[6] Because Title VII rights are in this sense self-contained, the present case does not present the difficulty that divided the Court in *U.S. Bulk Carriers, Inc.* v. *Arguelles*, *supra*. In that case, the claimant's statutory and contract rights were interdependent—whether (and in what measure) he was entitled to the statutory penalty depended "entirely on interpretation and application of the bargaining agreement" (White, J., dissenting, slip op. at 5–6). Title VII rights, by contrast, apply equally and in the same measure irrespective of whether a collective agreement exists or whether that agreement, if it does exist, contains an anti-discrimination provision. Moreover, in further contrast to the statute involved in the *Arguelles* case, Title VII was enacted long after widespread use of arbitration under collective agreements had become established, yet, as we show, *infra*, pp. 22–25, Congress specifically provided for a different method of enforcing Title VII rights.

the individual aggrieved. See *Vaca* v. *Sipes*, 386 U.S. 171; *Republic Steel Corp.* v. *Maddox*, *supra*; Cox, *Rights Under a Labor Agreement*, 69 Harv. L. Rev. 601 (1956); see, also, *Glover* v. *St. Louis-San Francisco Ry. Co.*, 393 U.S. 324. In the present case, for example, the Union chose not to file a post-hearing brief with the arbitrator, even though the employer filed such a brief (see, *supra*, p. 8).

Arbitration, in sum, is an essentially private process "tailored to the needs of the contracting parties" *Hutchings* v. *United States Industries, Inc.*, *supra*, 428 F. 2d at 312. A very limited scope of judicial review of arbitration awards is appropriate, at least in part, because arbitrators merely interpret and apply the disparate provisions of privately-adopted agreements. A Title VII action, by contrast, assumes "a public character in which remedies are devised to vindicate the policies of the Act, not merely to afford private relief to the employee." 428 F. 2d at 311. Congress has, in Title VII, created nation-wide rights and provided methods for their enforcement which assure that they will be judicially defined and uniformly applied. The decision in a Title VII suit will thus affect the entire class of persons who are the victims of discrimination and not merely the parties to a contract. The courts, accordingly, have a "special responsibility" (*ibid.*; *Bowe* v. *Colgate-Palmolive Co.*, *supra*, 416 F. 2d at 715) in the public interest to resolve Title VII claims.

3. The circumstances of this case concretely illustrate the importance of permitting the individual to

seek vindication of his Title VII rights in court, regardless of whether he also has asserted rights under the collective bargaining agreement. The contract here expressly limits the arbitrator to interpretation of the agreement (A. 35a). Under that agreement (which, as previously noted, contains no provision on the subject of religious discrimination), he found no violation of the contract in the employer's "overtime substitute" policy. There is no basis for concluding that this interpretation of the contract is wrong, much less that a reviewing court would overturn the decision. As we show below, however, the provision does conflict with Title VII. Yet the arbitrator, consistently with his limited authority, did not even consider the issues under Title VII which the employer's "overtime substitute" policy raise. Accordingly, even though the arbitration and the Title VII claim in a sense "involve[d] the same subject matter," the arbitrator's award, under settled principles, is "not conclusive * * * as to questions of law [under Title VII] not litigated" before him. American Law Institute, *Restatement of Judgments*, § 70 comment *c*.[7] Cf. *Monsanto Chemical Co.*, 130 N.L.R.B. 1097, 1099.

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[7] Indeed, even if an arbitrator were to purport to rule on Title VII issues in the course of interpreting a labor agreement, the arbitrator's determination of those issues would have no collateral estoppel effect because the arbitrator's jurisdiction is limited to deciding issues under the contract. See American Law Institute, *Restatement of Judgments* § 71 and comments *a* and *d*. This rule, which applies because of the special and limited nature of the arbitrator's jurisdiction, extends to his factual as well as his legal determinations. *Id.*, comment *d* and illustration 1.

B. The Federal Judiciary is the final forum for determining the rights conferred by Title VII.

It is true that many collective bargaining agreements themselves contain broad anti-discrimination causes. It is also true that an arbitrator may consider sources outside the contract, presumably including the requirements of enacted legislation (*United Steelworkers of America* v. *Enterprise Wheel & Car Corp., supra,* 363 U.S. at 597), as a guide to the interpretation of the contract. It is thus possible that an arbitrator can, under the contract, provide a remedy for individual discrimination in certain cases. But the possibility that the arbitrator will interpret the contract in light of Title VII or that he may have power to award satisfactory relief does not alter the ultimate responsibility which Congress has placed in the courts for the interpretation and enforcement of Title VII rights.

The broad goal of Title VII is to eliminate discrimination in employment because of race, color, religion, sex or national origin. Congress hoped that this comprehensive goal would be achieved primarily through conciliation and persuasion. To that end, it created the Equal Employment Opportunity Commission and established a procedure under Title VII whereby existing state and local equal employment opportunity agencies, as well as the Commission, would have the opportunity to conciliate a dispute before an individual was permitted to sue. At the same time, however, Congress placed the final responsibility for enforcement of Title VII guarantees in the courts. Congress invested the Commission with authority only to

investigate an individual's charge of discrimination and to attempt to achieve voluntary compliance with the requirements of Title VII. It did not give the Commission the authority either to impose administrative sanctions or to initiate suits.[8] Rather, the statute provides that if EEOC fails to achieve conciliation, the aggrieved person himself may bring a civil action (Section 706(e), 42 U.S.C. 2000e–5(e)) in federal district court (Section 706(f), 42 U.S.C. 2000e–5(f)). And the statute authorizes the federal courts to grant injunctive relief, and to order affirmative action if they find that the Act has been violated (Section 706(g), 42 U.S.C. 2000e–5(g)). It is thus obvious from the structure of the statute that "[t]o the federal courts alone is assigned the power to enforce compliance with [Title VII], and the burden of obtaining enforcement rests upon the individual claiming to have been aggrieved by its violation." *Hutchings v. United States Industries, Inc., supra,* 428 F. 2d at 310.[9]

[8] Under Section 706(i), 42 U.S.C. 2000e–5(i), the Commission may file suit to compel compliance with an order rendered in a private suit. The Attorney General may bring suit against persons engaged in a "pattern or practice of resistance to the full enjoyment" of Title VII rights, 42 U.S.C. 2000e–6, and may intervene in private actions "of great public importance." 42 U.S.C. 2000e–5(e).

[9] This conclusion is further confirmed by the legislative history of earlier versions of the Title VII, which would have given EEOC more power. The original Senate version of Title VII, as reported out of Committee (S. 1937), provided for a quasi-judicial board with authority to receive unresolved complaints of employment discrimination from an Administrator within the Department of Labor, and to issue broad remedial orders. See *Comparative Analysis of Title VII of H.R. 7152 as Passed by the House with S. 1937, as Reported,* 110 Cong. Rec. 12596–12597, 88th Cong., 2d Sess. (June 3, 1964); 110 Cong. Rec. 12596 (Statement of Sen-

The federal courts have, consistently with the intent of Congress, emphasized the fundamental importance of individual access to the courts as the ultimate means of enforcing Title VII guarantees. They have, for example, repeatedly refused to deprive individuals of a judicial determination of their Title VII rights because of alleged procedural irregularities.[10] And the three courts of appeals which have considered the issue have held that an individual may obtain adjudication of his claim in federal district court even if EEOC has previously determined that no violation has occurred. *Fekete* v. *U.S. Steel Corp.*, 424 F. 2d 331 (C.A. 3); *Flowers* v. *Local No. 6, Laborers Int'l U. of*

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ator Clark). The House version (H.R. 7152), which the Senate considered instead of its own bill, did not provide for a board with power to issue enforcement orders. It granted the Commission authority, however, to institute civil suits in federal district court when the Commission failed to achieve voluntary compliance. The House version was eventually enacted into law, but only after the Senate had removed from EEOC an authority to initiate suits, leaving it with essentially investigation and conciliation functions. See *Comparative Analysis of the Civil Rights Bill, H.R. 7152, as Passed by the House of Representatives and by the Senate*, 110 Cong. Rec. 15999–16004, 88th Cong., 2d Sess. (July 6, 1964). This history further emphasizes the key role which Congress intended suits by individuals in the courts to have in the enforcement of Title VII.

[10] See, *e.g.*, *Sanchez* v. *Standard Brands*, 2 FEP Cases 788 (C.A. 5, No. 27,730, July 1, 1970); *Cunningham* v. *Litton Industries*, 413 F. 2d 887 (C.A. 9); *Georgia Power Co.* v. *Equal Employment Opportunity Commission*, 412 F. 2d 462 (C.A. 5); *Miller* v. *International Paper Co.*, 408 F. 2d 283 (C.A. 5); *Johnson* v. *Seaboard Air Line R.R. Co.*, 405 F. 2d 645 (C.A. 4), certiorari denied *sub nom. Pilot Freight Carriers, Inc.* v. *Walker*, 394 U.S. 918; *Weeks* v. *Southern Bell Telephone & Telegraph Co.*, 408 F. 2d 228 (C.A. 5). But see *United States* v. *Pullman*, No. 957, this Term, certiorari granted, February 22, 1971; *Love* v. *Pullman*, No. 6008, this Term, certiorari granted, February 22, 1971.

North America, 431 F. 2d 205 (C.A. 7); *Beverly* v. *Lone Star Lead Constr. Corp.*, 3 FEP Cases 74 (C.A. 5, No. 29,620, January 19, 1971).

C. Permitting individuals alleging discrimination to proceed in more than one appropriate forum properly accommodates congressional policies favoring both private resolution of employment disputes and full protection of the individual against discrimination.

The decision below, by forcing aggrieved persons to choose between arbitration and court action as a means of resolving their claims under both collective bargaining agreements and Title VII, would inevitably undermine one or both of the federal policies favoring arbitration of contract disputes and adjudication of statutory claims. For, under this election of rights approach, individuals who believe they can obtain fuller or surer relief by invoking the remedies prescribed by Title VII would be likely to bypass arbitration; while the speed and lesser expense of arbitration might prompt others to elect arbitration and thereby relinquish their statutory right to obtain a final determination of their Title VII rights from the courts.

The policies favoring arbitration of labor disputes and adjudication of Title VII claims are, however, entirely compatible—as is shown by the approach adopted by the courts of appeals in *Hutchings, supra, Culpepper, supra, and Bowe, supra,* as well as by the implications of Title VII's legislative history.

The Seventh Circuit in *Bowe,* stressing the fact that distinct rights exist under collective bargaining agreements and Title VII, ruled simply that an individual

may pursue both rights simultaneously.[11] The Fifth Circuit, in *Hutchings* and in *Culpepper*, suggested that use of the grievance-arbitration procedure could be considered simply another means of attempting to achieve the congressional policy of private settlement of disputes. While it did not imply that resort to arbitration should be required prior to initiation of a Title VII suit, the court in *Hutchings* pointed out (428 F. 2d at 313):

> It is understandable that a union member would first proceed to vindicate any rights he felt he had under the contract. He should not be penalized for so doing * * *.
>
> Title VII outlaws certain forms of discrimination in employment. An important method for the fulfillment of congressional purpose is the utilization of private grievance-arbitration procedures. This comports not only with the national labor policy favoring arbitration as a means for the final adjustment of labor disputes * * * but also with the specific enforcement policy of Title VII that discrimination is better curtailed through voluntary compliance with the Act than through court orders. * * *

The court below asserted that it was necessary to give binding effect to the arbitrator's award because the employee would otherwise have the opportunity, not available to an employer, to "relitigate the award

[11] As in *National Labor Relations Board* v. *Acme Industrial Co.*, *supra*, 385 U.S. at 438, "the assertion of jurisdiction by * * * [EEOC and the courts under Title VII] in no way threatens the power * * * given the arbitrator to make binding interpretations of the labor agreement."

in the courts" by a Title VII suit (A. 134a).[12] This characterization is, we submit, singularly inapposite to the facts of the present case, in which, as previously noted, the collective agreement contained no anti-discrimination clause and the arbitrator of course did not purport to decide Title VII rights. But, more fundamentally, the court of appeals' approach overlooks the fact that Congress, in enacting Title VII, apparently concluded that the need to vindicate the rights of employees against discrimination was more vital than the need to protect employers against attempts to enforce these rights in more than one appropriate forum.

Title VII itself first subjects the employer to proceedings in state or local equal opportunity commissions, some of which have broader enforcement powers than EEOC, and to the conciliation efforts of the Commission, prior to judicial proceedings. And Congress clearly indicated that it did not intend, by Title VII, to preclude an individual from seeking

[12] The court also was of the view that availability of a Title VII suit after arbitration "could sound the death knell to arbitration of labor disputes, which has been so usefully employed in their settlement. Employers would not be inclined to agree to arbitration clauses in collective bargaining agreements if * * * the awards are binding on them but not on their employees" (A. 135a). It is, however, very doubtful that permitting the individual to sue under Title VII will bring about this result. As this Court repeatedly has stressed, the arbitration agreement is essentially a *quid pro quo* for a no-strike clause in the contract. See, *e.g.*, *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra; Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448. The employer thus has ample incentive to agree to an arbitration clause, regardless of the possibility that it may not prevent litigation over alleged discrimination.

rights guaranteed by other state or federal laws. The Senate rejected an amendment offered by Senator Tower which would have made the provisions of Title VII the exclusive means whereby any department, agency, or instrumentality of the federal government could grant or seek relief against employment discrimination covered by the Act. 110 Cong. Rec. 13650–13652, 88th Cong., 2d Sess. (June 12, 1964). Senator Clark, a sponsor of the bill, said in explanation that "title VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction." 110 Cong. Rec. 7207.

There is no reason to believe, particularly in light of the emphasis in Title VII on the ultimate authority of the courts, that the NLRB or any other governmental agency could, by the exercise of its jurisdiction, preclude resort to the courts under Title VII.[13] In fact, two courts of appeals have recently held that Title VII actions are not barred by prior adverse determinations under other laws with respect to the

[13] Under the National Labor Relations Act, it is apparently established that a union's breach of its duty of fair representation may constitute an unfair labor practice. See *Vaca* v. *Sipes*, 386 U.S. 171, 177–178, 181; *Local Union No. 12, United Rubber, C., L. & P. Workers* v. *National Labor Relations Board*, 368 F. 2d 12 (C.A. 5), certiorari denied, 389 U.S. 837. Whether racial and similar discrimination by an employer alone is an unfair labor practice is not as certain. See *United Packinghouse, Food & Allied Workers* v. *National Labor Relations Board*, 416 F. 2d 1126 (C.A.D.C.), certiorari denied, 396 U.S. 903.

same practices. See *Taylor* v. *Armco Steel Corp.*, 429 F. 2d 498 (C.A. 5) (National Labor Relations Act); *Norman* v. *Missouri Pacific Railroad*, 414 F. 2d 73 (C.A. 8) (Railway Labor Act). Much less is there reason to believe that employers and unions (against both of whom Title VII's anti-discrimination provisions are directed) can, by private agreement, deprive individuals of the right to access to the courts conferred on them by Congress.

In sum, while Congress was silent on the relationship of arbitration and Title VII rights, the multiple forum approach which it adopted with respect to other means of securing rights against discrimination strongly suggests that arbitration is merely an additional means by which individuals may seek relief from discrimination under relevant provisions of the collective agreement, without being deprived of their statutory right to a judicial determination of their Title VII rights.

II

RESPONDENT VIOLATED TITLE VII BY REFUSING TO MAKE A REASONABLE ACCOMMODATION TO PETITIONER'S SINCERE RELIGIOUS BELIEFS

A. Title VII prohibits employment practices neutral on their face which have a discriminatory effect and are not required by business necessity

The coverage of Title VII is not limited to "overt discrimination" on the basis of religion, race, color, sex, or national origin. The Act also reaches "practices that are fair in form, but discriminatory in operation." *Griggs* v. *Duke Power Co.*, No. 124, this Term, decided March 8, 1971, slip. op. at 6. Thus, where

employment practices are neutral on their face but discriminatory in effect, the employer must show that the practices are required by "business necessity" (*ibid.*).

The question in *Griggs* was whether the employer's requirement that all prospective employees have either graduated from high school or passed a standardized general intelligence test was a racially discriminatory practice in violation of Title VII. It was shown that the employment prerequisites were not "significantly related to successful job performance" and that they "operate[d] to disqualify Negroes at a substantially higher rate than white applicants." *Id.* at 1.

The employer contended that his practices did not violate Title VII because they were neutral on their face and because there was no showing of an intent to discriminate. This Court rejected that contention and adopted, instead, the interpretation—set forth in the Commission's *Guidelines on Employee Selection Procedures,* 29 C.F.R. 1607 (35 Fed. Reg. 12333), and generally applied by the courts of appeals—that practices which have a discriminatory effect, though neutral on their face, violate Title VII unless they are shown to be necessary to the "safe and efficient operation" of the business. *Local 189, United Papermakers and Paperworkers* v. *United States,* 416 F. 2d 980, 989 (C.A. 5), certiorari denied, 397 U.S. 919. See, also, *Jones* v. *Lee Way Motor Freight, Inc.,* 431 F. 2d 245 (C.A. 10), No. 1113, this Term, certiorari denied, March 8, 1971; *United States* v. *Sheet Metal Workers, Local 36,* 416 F. 2d 123 (C.A. 8); *United States* v. *Int'l Brotherhood of*

Electrical Workers, Local No. 38, 428 F. 2d 144 (C.A. 6), certiorari denied, 400 U.S. 943. Thus, the Court held that "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." *Griggs,* slip op. at 8.

Griggs dealt with racial discrimination. There is, however, no basis on which to conclude that the test of "business necessity" does not apply equally with respect to other types of discrimination prohibited by Title VII. Cf. *Phillips* v. *Martin Marietta Corp.,* No. 73, this Term, decided January 25, 1971.[14] The Commission, whose interpretation of the statute "is entitled to great deference" (*Griggs* v. *Duke Power Co., supra,* at 9; *Udall* v. *Tallman,* 380 U.S. 1), has, in fact, consistently incorporated the requirement of business necessity (in an appropriately modified version) in its *Guidelines on Discrimination Because of Religion,* 29 C.F.R. 1605.1. The *Guidelines* provide "that the duty not to discriminate on religious grounds * * * includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made

[14] Section 703(e) of the Act, 42 U.S.C. 2000(e), does permit classification on the basis of "religion, sex, or national origin [but not race or color] in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." The Commission has construed this exception quite narrowly. See *Phillips* v. *Martin Marietta Corp., supra,* slip. op. at. 2–3 (Marshall, J., concurring).

without undue hardship on the conduct of the employer's business." 29 C.F.R. 1605.1(b) (App. A, *infra*, p. 39).[15]

The requirement under Title VII that an employer justify practices having discriminatory effects by a showing of business necessity is similar to the require-

[15] The court of appeals stated that the district court had erred by applying these *Guidelines* (which were promulgated in 1967) to petitioner's claim of religious discrimination, rather than the *Guidelines* (App. B, *infra*, pp. 41–43) which were in effect at the time of the alleged discrimination (A. 129a–131a). The court of appeals held that the company "clearly" had complied with the prior *Guidelines* (A. 130a), although it added that the company's "overtime substitute" policy also complied with the 1967 *Guidelines*. As Judge Combs, dissenting, pointed out, however, the earlier *Guidelines* included a virtually identical general requirement of reasonable accommodation where it can be made "without serious inconvenience to the conduct of the business" (A. 138a; see App. B, *infra*, p. 41). The chief difference between the two versions of the *Guidelines* is that the earlier version attempted to provide illustrations of practices which would be acceptable despite their impact on religious practice. The court of appeals relied upon the illustrations in concluding that the respondent's "overtime substitute" policy complied with the *Guidelines*. However, the situation of petitioner was not identical to that described in any illustration. The employer did not establish a uniform workweek as a result of which all employees were required to work on Saturdays or Sundays (App. B, *infra*, pp. 41–42, 29 C.F.R. 1605.1(a)(3), (b)(3)), but, rather, permitted substitutions on these overtime days. And respondent's overtime requirements were first applied in 1965 (A. 30a), after petitioner had been employed. See App. B, *infra*, pp. 42–43, 29 C.F.R. 1605.1(b)(3), (4). Consequently, it was proper for the district court to apply the general standard, set forth by both versions of the *Guidelines*. Respondent, moreover, clearly did not rely upon the illustrations of the earlier *Guidelines* in formulating its "overtime substitute" policy. That policy was adopted in September 1965 (A. 30a), while the *Guidelines* were promulgated in 1966.

ment of a demonstration of "some compelling state interest" which this Court has utilized to protect from governmental infringement the constitutional right to free exercise of religion. See *Sherbert* v. *Verner,* 374 U.S. 398, 406; see, also, *West Virginia State Bd. of Ed.* v. *Barnette,* 319 U.S. 624; *Barnett* v. *Rodgers,* 410 F. 2d 995 (C.A. D.C.).

Sherbert involved the denial of unemployment compensation to an individual whose religion forbade her from working on Saturdays. Because of her religious practice, the Sabbatarian was discharged from employment and unable to obtain satisfactory re-employment. Her application for unemployment compensation benefits was denied because she "failed, without good cause" to accept proffered suitable employment, which involved working on Saturdays. *Sherbert* v. *Verner, supra,* 374 U.S. at 401. This Court held that "appellant's declared ineligibility for benefits derives solely from the practice of her religion * * *. The ruling [denying unemployment compensation] forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." 374 U.S. at 404. The Court ruled that such a choice could not be required, in the absence of a compelling justification. The state's contentions of administrative necessity did not provide such a justification. 374 U.S. at 406–409. Cf. *Braunfeld* v. *Brown,* 366 U.S. 599.

Petitioner's situation, as we shall show, is quite comparable to that of the appellant in *Sherbert.* Both were required to choose between adhering to their

religion and maintaining a livelihood by policies which were not justified by compelling interests.[18]

B. Respondent's "overtime substitute" policy has a religiously discriminatory effect and was not shown to be necessary to the safe and efficient operation of its business

Petitioner was discharged because his religious needs—the sincerity of which has never been challenged (A. 45a)—prevent him either from working on Sunday or arranging for a substitute. The court of appeals insisted that "[t]he reason for Dewey's discharge was not discrimination on account of his religion * * * [but] because he violated the provisions of the collective bargaining agreement * * * [which] were applicable equally to all employees" (A. 131a). As we have shown above, however, the fact that a policy neutral on its face is applied equally to all persons does not necessarily indicate a lack of discrimination forbidden by Title VII, for the effect of such a policy may be to discriminate against individuals who hold certain religious beliefs. The "overtime substitute" policy which resulted in petitioner's discharge plainly has such a discriminatory effect.

Respondent made no "reasonable accommodation" to petitioner's religious practice. Respondent's general policy of permitting the employee who did not wish to work assigned overtime (whether for religious or other reasons) to arrange for a substitute may, incidentally,

[18] The court of appeals rejected the analogy to *Sherbert* because that case "involved state, and not private action" (A. 129a). Title VII is designed, however, to remedy private discrimination. The fact that constitutional rights were involved in *Sherbert* does not justify affording the statutory rights dealing with the same subject matter less effective protection.

be an acceptable accommodation for an employee whose sincere religious belief does not prevent him from asking another employee to work on his Sabbath in his behalf. But it does not accommodate the religious beliefs of one who cannot make such a request. In these circumstances, reasonable accommodation by the employer requires a further step, such as the simple one of arranging for the substitute himself, from among his other qualified employees.

The respondent did not show that making this simple effort to accommodate petitioner's religious needs would impose an undue hardship on the operation of its business. The court of appeals' view was that "[t]o accede to Dewey's demands would require Reynolds to discriminate against its other employees by requiring them to work on Sundays in the place of Dewey * * *. This would constitute unequal administration of the collective bargaining agreement * * * and could create chaotic personnel problems * * *" (A. 132a). Obviously, however, the employer need not *require* another employee to work in petitioner's place; like the employee seeking a substitute, the employer need only seek a voluntary replacement. The record indicates that there were several qualified replacements available on each of the Sundays petitioner was scheduled to work (A. 42a–44a), and respondent did not show that none of them would have been willing voluntarily to replace petitioner. The only necessary effect of the employer's accommodating petitioner's religious beliefs, then, would be to shift a relatively minor administrative burden from petitioner

to the employer. Moreover, even if none of the other qualified employees had been willing voluntarily to work overtime, and even if it arguably would have violated the collective agreement for the employer to require one of them to work in petitioner's place, it still would have been reasonable for the employer to impose that requirement in order to fulfill his obligations under the statute (which, of course, cannot be abrogated by the terms of the agreement).

Consequently, the respondent, by applying an "overtime substitute" policy which operated to discriminate against petitioner because of his religious needs and which was not shown to be required by business necessity, violated petitioner's rights under Title VII.

CONCLUSION

For the foregoing reasons the decision of the court of appeals should be reversed, and the case should be

remanded with instructions to reinstate the judgment of the district court.

Respectfully submitted.

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APPENDIX A

EEOC Guidelines on Discrimination Because of Religion (1967)

29 C.F.R. (1968 ed.) 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employes who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people.

(Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000e–12 [32 F.R. 10298, July 13, 1967].)

APPENDIX B

EEOC Guidelines on Discrimination Because of Religion (1966)

29 C.F.R. (1967 ed.) 1605.1 Observance of Sabbath and religious holidays.

(a)(1) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or to refuse to hire a person whose religious observances require that he take time off during the employer's regular workweek. These complaints arise in a variety of contexts, but typically involve employees who regularly observe Saturdays as the Sabbath or who observe certain special holidays during the year.

(2) The Commission believes that the duty not to discriminate on religious grounds includes an obligation on the part of the employer to accommodate to the reasonable religious needs of employees and, in some cases, prospective employees where such accommodation can be made without serious inconvenience to the conduct of the business.

(3) However, the Commission believes that an employer is free under Title VII to establish a normal workweek (including paid holidays) generally applicable to all employees, notwithstanding that this schedule may not operate with uniformity in its effect upon the religious observances of his employees. For example, an employer who is closed for business on Sunday does not discriminate merely because he re-

quires that all his employees be available for work on Saturday. Likewise, an employer who closes his business on Christmas or Good Friday is not thereby obligated to give time off with pay to Jewish employees for Rosh Hashanah or Yom Kippur.

(b) While the question of what accommodation by the employer may reasonably be required must be decided on the peculiar facts of each case, the following guidelines may prove helpful:

(1) An employer may permit absences from work on religious holidays, with or without pay, but must treat all religions with substantial uniformity in this respect. However, the closing of a business on one religious holiday creates no obligation to permit time off from work on another.

(2) An employer, to the extent he can do so without serious inconvenience to the conduct of his business, should make a reasonable accommodation to the needs of his employees and applicants for employment in connection with special religious holiday observances.

(3) The employer may prescribe the normal work week and foreseeable overtime requirements, and, absent an intent on the part of the employer to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reason to believe that such requirements would conflict with his religious obligations is not entitled to demand any alteration in such requirements to accommodate his religious needs.

(4) Where an employee has previously been employed on a schedule which does not conflict with his religious obligations, and it becomes necessary to alter his work schedule, the employer should attempt to achieve an accommodation so as to avoid a conflict. However, an employer is not compelled to make such an accommodation at the expense of serious inconvenience to the conduct of his business or disproportionate allocation of unfavorable work assignments to other employees.

(Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000e–12) [31 F.R. 8370, June 15, 1966].)

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